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Attorneys for Plaintiff
BMC Stock Holdings, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BMC STOCK HOLDINGS, INC., a
Delaware Corporation,

Plaintiff,

vs.

NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH, PA, a Pennsylvania
Corporation; AMERICAN HOME
ASSURANCE COMPANY, a New
York Corporation; THE INSURANCE
COMPANY OF THE STATE OF
PENNSYLVANIA, an Illinois
Corporation,

Defendants.

Civil Action No.

COMPLAINT FOR:

(1) DECLARATORY JUDGMENT;
(2) BREACH OF CONTRACT;
(3) BREACH OF DUTY OF GOOD
FAITH AND FAIR DEALING; and
(4) ACCOUNTING

DEMAND FOR JURY TRIAL

1 Plaintiff BMC STOCK HOLDINGS, INC. complains against each
2 Defendant and alleges as follows:

3 **PRELIMINARY STATEMENT**

4 1. Plaintiff BMC STOCK HOLDINGS, INC. ("Plaintiff" or "BMHC")
5 brings this action against Defendants NATIONAL UNION FIRE INSURANCE
6 COMPANY OF PITTSBURGH, PA ("National Union"), AMERICAN HOME
7 ASSURANCE COMPANY ("AHAC") and THE INSURANCE COMPANY OF
8 THE STATE OF PENNSYLVANIA ("ICSP") (National Union, AHAC and ICSP,
9 collectively, "AIG" or "Defendants") because of AIG's breach of four general
10 liability fronting insurance policies issued by AIG to BMHC (the "Policies"), and
11 AIG's bad faith investigation and adjustment of claims by purported additional
12 insureds to those Policies' Completed Operations additional insured endorsements.

13 2. Purported additional insureds have sought coverage from AIG for
14 defense costs in underlying lawsuits, which AIG paid. AIG has subsequently
15 sought reimbursement from BMHC for these paid costs. Where BMHC was able
16 to confirm that the claimant was an additional insured on one or more of the
17 Policies, that BMHC worked on at least one of the homes in the underlying
18 lawsuit, that the plaintiff in an underlying lawsuit alleged BMHC's work was
19 defective, and that no policy exclusion applies – that is, where additional insured
20 coverage was properly extended – BMHC has reimbursed AIG. In almost every
21 instance, BMHC expressed concerns to AIG that the amounts paid by AIG to the
22 claimants were excessive.

23 3. AIG, however, repeatedly failed to conduct a good faith investigation
24 and improperly adjusted at least eleven claims of purported additional insureds.
25 Despite repeated requests by BMHC, AIG has not been able to provide BMHC
26 with any evidentiary basis for AIG's payments under the Policies to those
27 additional insured claimants.

28 4. AIG has nonetheless continued to demand reimbursement from

1 BMHC where no additional insured coverage exists, despite AIG's failing to
 2 investigate the basis for the purported coverage. AIG has failed to honor its duties
 3 to its policyholder BMHC, instead placing the interests of itself and purported
 4 additional insureds before its policyholder BMHC.

5 5. Due to AIG's wrongful and bad faith acts, BMHC has been harmed
 6 and has been forced by AIG's actions to seek relief from this Court.

7 JURISDICTION AND VENUE

8 6. This Court has jurisdiction under section 1332(a) of title 28 of the
 9 United States Code because there is complete diversity among the parties and the
 10 amount in controversy exceeds \$75,000.00 exclusive of costs and interest.

11 7. An actual controversy exists between Plaintiff BMC STOCK
 12 HOLDINGS, INC. and Defendants NATIONAL UNION FIRE INSURANCE
 13 COMPANY OF PITTSBURGH, PA, AMERICAN HOME ASSURANCE
 14 COMPANY and THE INSURANCE COMPANY OF THE STATE OF
 15 PENNSYLVANIA as to whether, under certain fronting insurance policies issued
 16 to BMHC, AIG owes or ever owed certain purported additional insureds coverage
 17 for the costs of defending various actions brought against those purported
 18 additional insureds by third parties, for which AIG has demanded payment from
 19 BMHC.

20 8. This Court has jurisdiction over BMHC's claims for declaratory relief
 21 under section 2201 of title 28 of the United States Code because an actual
 22 controversy ripe for judicial determination exists between BMHC and AIG.

23 9. Venue is proper within this judicial district under section 1391,
 24 subsections (b)(1) and (b)(2) of title 28 of the United States Code because a
 25 substantial part of the events or omissions giving rise to the claim occurred in this
 26 judicial district, a substantial part of property that is the subject of the action is
 27 situated in this judicial district, and because the defendants generally transact
 28 business in this district or within the State of California.

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THE PARTIES

10. Plaintiff BMC STOCK HOLDINGS, INC. is a Delaware Corporation with its principal place of business in the State of Georgia. Building Materials Holding Corporation merged into and with Stock Building Supply Holdings, Inc., several years after the corporate restructuring of Building Materials Holding Corporation in Chapter 11 bankruptcy. The surviving entity was renamed BMC Stock Holdings, Inc.

11. Plaintiff alleges upon information and belief that Defendant NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA is a Pennsylvania Corporation with its principal place of business in State of New York. National Union is a subsidiary of American International Group, Inc.

12. Plaintiff alleges upon information and belief that Defendant AMERICAN HOME ASSURANCE COMPANY is a New York Corporation with its principal place of business in the State of New York. AHAC is a subsidiary of American International Group, Inc.

13. Plaintiff alleges upon information and belief that Defendant THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA is an Illinois Corporation with its principal place of business in State of New York. ICSP is a subsidiary of American International Group, Inc.

GENERAL ALLEGATIONS

I. THE INSURANCE POLICIES

14. BMHC is a building materials company that provides residential building products (supply) and construction services (services) to builders and contractors throughout the United States, particularly in the American West.

15. Pursuant to insurance requirements for a construction company, BMHC purchased insurance policies, including four fronting general liability insurance policies from the Defendants.

16. A fronting insurance policy is, in effect, a form of self-insurance, with

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1 a third party insurance company extending coverage if the grounds for coverage
2 are established. If the insurance company pays coverage to a policyholder or
3 additional insured under a fronting policy, it will seek reimbursement of the
4 covered amounts from the policyholder.

5 17. AIG offers such fronting insurance policies and has acknowledged
6 that such policies do not put AIG's own resources at risk like other liability
7 policies. Instead AIG only faces a credit risk as to its ability to recoup amounts
8 paid. AIG has described that its "role as a fronting company is to issue an
9 insurance policy to an insured and then, transfer some or all of this risk . . . to the
10 insured itself. This reliance on the insured to reimburse us for losses paid under the
11 policy, creates a credit exposure for AIG." See AIG, "About AIG's Fronting Fees
12 for Captive Programs", a copy of which is attached hereto as **Exhibit A**.

13 18. BMHC purchased four fronting general liability insurance policies
14 from the Defendants covering the policy periods November 11, 2003 to November
15 11, 2004, and November 11, 2004 to November 11, 2005. There were two general
16 liability insurance policies for each year under BMHC's insurance program. For
17 each year, one of the insurance policies covered BMHC's retail operations (supply)
18 and the other covered BMHC's construction services operations (services).

19 19. AIG addressed any credit risk it faced by requiring that BMHC post
20 letters of credit.

21 20. The two insurance policies covering BMHC's retail operations
22 (supply) are policy numbers 480-60-23 (policy period November 11, 2003 to
23 November 11, 2004) and 554-87-69 (policy period November 11, 2004 to
24 November 11, 2005). These two policies have a \$2,000,000 aggregate limit and a
25 \$2,000,000 products-completed operations aggregate limit, with a per-occurrence
26 limit of \$1,000,000.

27 21. The two insurance policies covering BMHC's construction services
28 (services) are policy numbers 933-29-02 (policy period November 11, 2003 to

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1 November 11, 2004) and 694-60-10 (policy period November 11, 2004 to
2 November 11, 2005). These two policies have a \$2,000,000 aggregate limit and a
3 \$2,000,000 products-completed operations aggregate limit, with a per-occurrence
4 limit of \$1,000,000.

5 22. The two insurance policies covering BMHC's construction services
6 contain wrap exclusions. Those wrap exclusions are not in the two policies
7 covering BMHC's supply. This means that insurance policy numbers 933-29-02
8 and 694-60-10 do not apply to "'bodily injury' or 'property damage' arising out of
9 [BMHC's] . . . operations included in the 'products-completed operations hazard'
10 at the location described in the Schedule of this endorsement, as a consolidated
11 (wrap-up) insurance program has been provided by the prime contractor/project
12 manager or owner of the construction project in which you are involved." Policy
13 Nos. 933-29-02 and 694-60-10 at Form No. CG 21 54 01 96. The Schedule for the
14 wrap exclusions in both insurance policies states "All jobsites insured under wrap-
15 up programs." Policy Nos. 933-29-02 and 694-60-10 at Form No. CG 21 54 01 96.

16 23. All four of the insurance policies contain additional insured
17 endorsements, including applicable additional insured endorsements for
18 "Completed Operations". Policy Nos. 480-60-23, 554-87-69 and 933-29-02 at
19 Form CG 20 37 10 01, and Policy No. 694-60-10 at Form CG 20 37 07 04.

20 24. Although the additional insured endorsement form 20 37 10 01 in
21 Policy numbers 480-60-23 and 554-87-69 is called "Completed Operations," the
22 endorsement contains the following language: "Any person or organization
23 contractually requiring status as an additional insured for ongoing operations you
24 perform for them." Policy Nos. 480-60-23 and 554-87-69 at Form CG 20 37 10
25 01. These additional insured endorsements also contain a schedule box for
26 "Location And Description of Completed Operations," but that box is blank. See
27 Policy Nos. 480-60-23 and 554-87-69 at Form CG 20 37 10.

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25. The Completed Operations additional insured endorsement for Policy numbers 480-60-23 and 554-87-69 (supply) is reprinted in relevant part as follows:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
SCHEDULE**

Name of Person or Organization:

ANY PERSON OR ORGANIZATION
CONTRACTUALLY REQUIRING STATUS AS
AN ADDITIONAL INSURED FOR ONGOING
OPERATIONS YOU PERFORM FOR THEM.

Location And Description of Completed Operations:

Additional Premium:

Policy Nos. 480-60-23 and 554-87-69 at Form CG 20 37 10 01.

26. Insurance Policy numbers 933-29-02 and 694-60-10 (services) state that the name of additional insured persons or organizations is "where required by written contract." Policy Nos. 933-29-02 at Form CG 20 37 10 01 and 694-60-10 at Form CG 20 37 07 04. These additional insured endorsements also contain a schedule box for "Location And Description of Completed Operations," but that box is blank. *See id.*

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27. The Completed Operations additional insured endorsement for Policy number 933-29-02 is reprinted in relevant part as follows:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
SCHEDULE**

Name of Person or Organization:

WHERE REQUIRED BY INSURED
CONTRACT

Location And Description of Completed Operations:

Additional Premium:

Policy No. 933-29-02 at Form CG 20 37 10 01.

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28. The Completed Operations additional insured endorsement for Policy number 694-60-10 is reprinted in relevant part as follows:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
WHERE REQUIRED BY INSURED CONTRACT	

Policy No. 933-29-02 at Form CG 20 37 07 04.

29. Policy numbers 480-60-23, 554-87-69 and 933-29-02, which all contain Form CG 20 37 10 01, also state the following in their Completed Operations additional insured endorsements:

Section II – Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” at the location designated and described in the schedule of this endorsement performed for that insured and included in the “products-completed operations hazard.”

Policy Nos. 480-60-23, 554-87-69 and 933-29-02 at Form CG 20 37 10 01.

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1 30. Policy No. 694-60-10, which includes Form CG 20 37 07 04, contains
2 the following provision in its Completed Operations additional insured
3 endorsement:

4 Section II – Who Is An Insured is amended to include as an
5 additional insured the person(s) or organization(s) shown in the
6 Schedule, but only with respect to liability for “bodily injury”,
7 “property damage” or “personal and advertising injury” caused,
8 in whole or in part, by “your work” at the location designated
9 and described in the schedule of this endorsement performed
10 for that additional insured and included in the “products-
11 completed operations hazard.”

12 Policy No. 694-60-10 at Form CG 20 37 07 04.

13 31. Each of the four insurance policies contain the same language
14 concerning indemnification and defense against a “suit,” contained on Form
15 number CG 00 01 10 01. This language states in pertinent part as follows:

16 SECTION I – COVERAGES

17 COVERAGE A BODILY INJURY AND PROPERTY DAMAGE
18 LIABILITY

19 1. Insurance Agreement

20 a. We will pay those sums that the insured becomes legally
21 obligated to pay as damages because of “bodily injury” or
22 “property damage” to which this insurance applies. We will
23 have the right and duty to defend the insured against any “suit”
24 seeking those damages. However, we will have no duty to
25 defend the insured against any “suit” seeking damages for
26 “bodily injury” or “property damage” to which this insurance
does not apply.

27 32. Each of the four insurance policies are governed by a Large Risk
28 Rating Plan Endorsement (“LRPPE”) (Form No. 81461), which provides for a

1 retained amount of \$1,000,000 per Occurrence for products or Completed
 2 Operations Liability.

3 33. Each LRRPE provides for Allocated Loss Adjustment Expenses
 4 (“ALAE”). The insurance policies define ALAE as follows:

5 “ALAE” will include all fees for service of process and court
 6 costs and court expenses; pre- and post-judgment interest;
 7 attorneys’ fees; cost of undercover operative and detective
 8 services; costs of employing experts; costs for legal transcripts;
 9 copies of any public records, and costs of depositions and court-
 10 reported or recorded statements; costs and expenses of
 11 subrogation; and any similar, cost or expense reasonably
 12 chargeable to the investigation, negotiation, settlement or
 13 defense of a loss or a claim or suit against you, or to the
 14 protection and perfection of your or our subrogation rights.

15 Policy Nos. 480-60-23, 554-87-69, 933-29-02, and 694-60-10 at Form No. 81461.

16 34. Each of the four insurance policies is governed by ALAE Option C,
 17 with an Excess % of 100%.

18 35. ALAE Option C is defined as follows:

19 Option C: *Subject Loss* includes all or a part of *ALAE* calculated
 20 according to the following formula:

- 21 i. If we incur NO obligation under the policies to pay
 22 damages, benefits or indemnity resulting from a claim,
 23 *Subject Loss* under that claim will include all *ALAE* up to
 24 the applicable *Retained Amount* and a percentage of all
 25 *ALAE* in excess thereof. . . .; or
 26 ii. if we DO incur an obligation to pay damages, benefits or
 27 indemnity under the policies because of a claim, *Subject*
 28 *Loss* under that claim will include all *ALAE* incurred under
 that claim, multiplied by the amount of our obligation to

1 pay damages or benefits up to the applicable *Retained*
2 *Amount*, divided by the total amount of our obligation to
3 pay damages or benefits.

4 Policy Nos. 480-60-23, 554-87-69, 933-29-02, and 694-60-10 at Form No. 81461.

5 II. THE DISPUTE

6 36. BMHC declared bankruptcy in 2009.

7 37. Due in part to BMHC's bankruptcy, the only new claims presented to
8 AIG under the four insurance policies are for additional insured coverage for
9 construction defect actions asserted against the purported additional insureds.
10 BMHC is not involved in those actions due to its bankruptcy.

11 38. AIG has paid defense costs to certain purported additional insureds
12 under the Policies. AIG subsequently has sought reimbursement from BMHC for
13 those paid defense costs.

14 39. Due to BMHC's bankruptcy, it was not involved in underlying
15 litigations and often first learned of an additional insured claim under the Policies
16 when BMHC received an invoice from AIG for reimbursement of defense costs.

17 40. Over the course of multiple years, BMHC's corporate risk
18 management and legal department employees have complained to AIG's adjusters,
19 the adjusters' supervisors, and others at AIG that the AIG adjusters handling the
20 additional insured claims were failing to properly investigate those claims before
21 AIG accepted them, made payment under the Policies, and sought reimbursement
22 from BMHC.

23 41. AIG failed to meaningfully respond to BMHC's concerns. BMHC
24 therefore stopped paying AIG's invoices related to those additional insured claims.

25 42. BMHC additionally demanded that AIG provide BMHC with
26 documentation that would confirm that the payments AIG had made on the
27 additional insured claims were proper and that AIG was entitled to reimbursement
28 from BMHC. AIG has failed to provide this documentation.

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1 43. Eventually, because BMHC refused to reimburse AIG for claims that
2 AIG would not provide documentation, AIG began to provide BMHC the
3 additional insured claimant's contact information. AIG required that BMHC
4 obtain approval from the additional insured claimant for AIG to send to BMHC the
5 requested documentation.

6 44. After receiving documentation from AIG, where the documentation
7 supported the additional insured claim and AIG's payment under the Policies,
8 BMHC promptly paid the invoices.

9 45. However, if the documentation provided by AIG did not support the
10 purported additional insured claim, then there was no support for AIG's payment
11 under the Policies to that additional insured claimant. In these instances, BMHC
12 advised AIG's adjuster (multiple times) what specific documentation was missing
13 so that AIG could provide the needed documentation.

14 46. Despite failing to adequately investigate or provide BMHC with
15 documentation that supports its payments, AIG has claimed and continues to claim
16 that BMHC owes it \$1,010,609.76 for invoices from June 2015 through September
17 2017. AIG also claims that additional loss reimbursement amounts have continued
18 to accrue since September 2017.

19 47. By letter dated February 9, 2018, BMHC again disputed eleven claims
20 paid by AIG as of September 30, 2017, for which AIG seeks reimbursement for
21 defense cost payments to purported additional insureds under the Policies. The
22 documents provided to BMHC by AIG do not provide any evidence that BMHC
23 worked on any of the homes in the underlying lawsuits. Despite follow up by
24 BMHC, AIG has not provided documentation supporting a right to reimbursement
25 for these eleven claims. A copy of BMHC's February 9, 2018 letter is attached
26 hereto as **Exhibit B**.

27 48. By letter dated April 26, 2018, counsel for AIG contended that
28 because it has a broad duty to defend, AIG had to defend the purported additional

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1 insureds upon the submission of their claims. AIG claimed in that letter – without
2 adequate evidentiary support – that it “has reviewed each of these eleven claims
3 and is satisfied that [AIG] has the duty to defend each of those claims and, as
4 explained above, the duty to defend is broader than the duty to indemnify.” A
5 copy of AIG’s April 26, 2018 letter is attached hereto as **Exhibit C**.

6 III. AIG HAS PAID CLAIMS AND SOUGHT REIMBURSEMENT FROM
7 BMHC WITHOUT CONFIRMING BMHC’S INVOLVEMENT WITH
8 THE HOMES IN SUIT OR CONTRARY TO POLICY PROVISIONS

9 49. AIG has failed to demonstrate that it has performed an adequate
10 investigation into the eleven claims, or to properly adjust the claims. Nevertheless,
11 AIG accepted the purported additional insured claims and paid defense costs, and
12 now expects BMHC to reimburse AIG after AIG obviously engaged in an
13 inadequate investigation and improper claims adjustment.

14 50. The eleven claims and the amounts sought by AIG for reimbursement
15 as of September 30, 2017, are as follows:

16 a. Acquaviva Brandon, 684-488610. Beazer Homes claimed
17 additional insured status. BMHC requested Beazer Homes allow AIG to provide
18 BMHC with documentation. AIG provided BMHC with documents for this
19 additional insured claim, but none of the documents establish that BMHC actually
20 worked at any of the homes in the underlying lawsuit. BMHC informed AIG of
21 this fact, but AIG has failed to provide any additional documentation. AIG has
22 nonetheless sought reimbursement from BMHC on this claim for \$49,326.41.

23 b. Adams Joseph, 683-395787. Richmond American Homes of
24 Nevada has sought additional insured coverage. With approval from Richmond
25 American Homes, AIG forwarded to BMHC all documents provided by the
26 company to support its additional insured claim. The document AIG relied upon
27 as proof that BMHC worked on the homes in the underlying lawsuit, was nothing
28 more than work product created by Richmond’s legal counsel in connection with

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1 the lawsuit. That documentation is insufficient to support a claim for payment by
2 AIG. BMHC advised AIG of this, but AIG has not provided BMHC with any
3 further documentation to support its payment. AIG nonetheless has sought
4 reimbursement from BMHC on this claim for \$150,000.00.

5 c. Adam Ramin, 683-568652. Morrison Homes claimed to be an
6 additional insured to BMHC. Morrison authorized AIG to release requested
7 documents to BMHC, and AIG forward those documents to BMHC. None of the
8 documents establish that BMHC actually worked at any of the homes in the
9 underlying lawsuit. BMHC advised AIG of this fact, but AIG has not provided
10 additional documentation. Further, only twelve of the homes in the underlying
11 lawsuit were completed before the Policies expired and one of the documents AIG
12 forwarded to BMHC show allegation of defects related to BMHC's scope of work
13 at those homes. AIG nonetheless has sought reimbursement from BMHC on this
14 claim for \$53,756.79.

15 d. Anh Huynh, 501-279255. Toll Brothers claimed to be an
16 additional insured to BMHC. Toll Brothers had a wrap policy. The applicable
17 policies on BMHC's work related to this project contained the wrap exclusion.
18 AIG should have denied the additional insured claim on the basis of the wrap
19 exclusion alone. AIG claims that one of the homes in the underlying lawsuit was
20 completed by BMHC before it enrolled in Toll Brothers's wrap program. Toll
21 Brothers authorized AIG to release requested documents to BMHC, and AIG
22 forward those documents to BMHC. None of the documents provided evidence
23 that BMHC actually worked on that particular home. BMHC provided AIG with
24 evidence that BMHC had enrolled in the wrap program before that particular home
25 was completed. AIG nonetheless has sought reimbursement from BMHC on this
26 claim for \$44,750.21

27 e. Bell (Sandestin), 683-475178. KB Home Nevada claimed to be
28 an additional insured to BMHC. KB Home authorized AIG to release requested

1 documents, and AIG forwarded same. None of these documents provided
2 evidence that BMHC performed any work on the homes in the underlying lawsuit.
3 AIG nonetheless has sought reimbursement from BMHC on this claim for
4 \$337,052.97.

5 f. Childs Jason, 683-526886. KB Home Greater Los Angeles
6 purported to be an additional insured of BMHC. KB Home authorized AIG to
7 release requested documents to BMHC, and AIG forwarded same. None of these
8 documents provided any evidence of BMHC's work on any of the homes in the
9 underlying lawsuit. BMHC informed AIG of this fact but no further
10 documentation has been provided to BMHC. AIG instead has sought
11 reimbursement from BMHC on this claim for \$181,889.48.

12 g. Farmer Shawn, 683-595347. Morrison Homes claimed to be an
13 additional insured to BMHC. With Morrison Homes's permission, AIG forwarded
14 BMHC requested documentation. None of those documents provide any evidence
15 that BMHC worked on any of the homes in the underlying lawsuit. BMHC
16 advised AIG of this fact, but AIG has provided BMHC with no additional
17 documentation. AIG, however, has sought reimbursement from BMHC on this
18 claim for \$38,201.99.

19 h. Ray Timothy, 683-628959. Beazer Homes claimed to be an
20 additional insured to BMHC. AIG paid to settle a lawsuit filed by another
21 insurance company that had paid for Beazer's defense in the underlying lawsuit.
22 With Beazer's approval, AIG provided BMHC with requested documents. None
23 of those documents provide any evidence that BMHC worked on any of the homes
24 in the underlying lawsuit. BMHC advised AIG of this fact but AIG has not
25 provided any additional documents. AIG nonetheless has sought reimbursement
26 from BMHC on this claim for \$10,000.00.

27 i. Sterling Court HOA (Mason), 683-342901. Richmond
28 American Home of Nevada has purported to be an additional insured of BMHC.

1 With Richmond American Home's permission, AIG forward to BMHC requested
2 documentation. None of those documents, however, provide any evidence of work
3 done by BMHC at any of the homes in the underlying lawsuit. AIG nonetheless
4 has sought reimbursement from BMHC on this claim for \$66,075.80.

5 j. Yang Mei, 683-637855. KB Home Greater Los Angeles has
6 claimed to be an additional insured of BMHC. KB Home authorized AIG to send
7 to BMHC requested documents, and AIG forwarded same. None of those
8 documents provided any evidence of BMHC's work at any of the homes in the
9 underlying lawsuit. BMHC advised AIG of that fact, but AIG has provided no
10 further documentation. AIG instead has sought reimbursement from BMHC on
11 this claim for \$61,548.96.

12 k. River Canyon Estates, 501-256010. D.R. Horton Portland
13 claimed to be an additional insured to BMHC. However, no lawsuit was ever filed
14 against D.R. Horton, as required under the Policies for defense coverage to be
15 triggered. BMHC informed AIG of the lack of a lawsuit before AIG paid D.R.
16 Horton, and that it would not reimburse AIG for voluntary payments. Despite the
17 lack of a lawsuit, AIG has sought \$17,949.09 from BMHC.

18 51. Upon information and belief, AIG has paid additional costs on several
19 of the foregoing eleven claims.

20 52. Also, upon information and belief, AIG has continued to pay costs to
21 purported additional insured claimants without conducting an adequate
22 investigation, and has failed to properly adjust those claims. AIG improperly seeks
23 such costs from BMHC for claimed reimbursement.

24 53. AIG has failed to confirm that purported additional insureds named
25 herein asserting a claim under the Policies were in fact additional insureds on the
26 Policies' Completed Operations additional insured endorsements.

27 54. AIG has further failed to confirm for at least nine of these claims that
28 BMHC actually worked on at least one of the homes in the underlying lawsuits.

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1 55. Upon information and belief, AIG has also failed to investigate
2 whether an exclusion to the insurance policies applies and bars additional insured
3 coverage prior to seeking reimbursement for costs paid to purported additional
4 insureds from BMHC.

5 56. By improperly extending additional insured coverage under the
6 Policies' Completed Operations additional insured endorsement, AIG has breached
7 its obligations under the insurance policies that it sold to BMHC.

8 57. Upon information and belief, in other instances, AIG has faced
9 additional insured demands in which it has declined to extend additional insured
10 status on virtually identical factual grounds—except that, in those instances, AIG
11 was spending its own money, not money that ultimately would be reimbursed by a
12 policyholder. The difference in the present matter reflects AIG's intentional
13 conduct in putting its interests first, before those of its policyholder.

14 58. BMHC has been forced to expend costs and bring this lawsuit to
15 address and terminate AIG's previous and continuing wrongful acts, including its
16 failure to investigate and act in good faith toward its policyholder.

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FIRST CLAIM FOR RELIEF FOR DECLARATORY JUDGMENT

(Against All Defendants)

59. Plaintiff hereby incorporates paragraphs 1 through 58 as though set forth fully herein.

60. An actual controversy exists between AIG and BMHC as to certain rights and the scope of insurance coverage under BMHC's four fronting insurance policies.

61. AIG has paid costs for the defense of entities claiming to be additional insureds of BMHC for at least eleven underlying lawsuits. AIG has sought reimbursement for those costs from BMHC.

62. AIG has failed to obtain or present any competent proof that BMHC performed any work on any of the homes at issue in the underlying lawsuits. Thus, its insurance policies should not be implicated and there should be no coverage under the Completed Operations additional insured endorsements.

63. AIG owes BMHC a duty to adequately investigate and adjust additional insured claims to ensure that BMHC was involved or performed work on the homes in an underlying lawsuit, that the complained-of homes were completed during one of the policy periods, that the complained-of work was BMHC's and was defective, and that no policy exclusions apply to bar additional insured coverage.

64. BMHC is therefore entitled to a declaration pursuant to 28 U.S.C. § 2201 that:

a. AIG failed to conduct a proper investigation to determine if the purported additional insureds named herein were additional insureds under the Policies;

b. AIG failed to conduct a proper investigation to determine whether BMHC performed work on at least one of the homes in the underlying lawsuits, that BMHC's work was completed during one of the policy periods, that

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1 the complained-of work was BMHC's and was defective, and that no policy
2 exclusions applied to bar coverage;

3 c. AIG voluntarily issued payments for underlying defense costs
4 to such purported additional insureds;

5 d. BMHC owes no payments to AIG for reimbursement of AIG's
6 voluntary payments;

7 e. AIG has a duty to and must perform adequate investigations
8 and claims adjustments and confirm that a purported additional insured under the
9 Policies is in fact an additional insured before AIG seeks reimbursement for
10 payments it makes from BMHC; and

11 f. If AIG determines after performing due diligence that an entity
12 is an additional insured under the Policies, it must also confirm that BMHC
13 performed work on at least one of the homes at issue in the underlying lawsuit, that
14 BMHC's work was completed during one of the policy periods for the Policies,
15 that the complained-of work was BMHC's and was defective, and that no Policy
16 exclusions apply to bar additional insured coverage before AIG seeks
17 reimbursement for payments it makes from BMHC; and

18 g. AIG shares its investigation details with BMHC.

19 **SECOND CLAIM FOR RELIEF FOR BREACH OF CONTRACT**

20 **(Against All Defendants)**

21 65. Plaintiff hereby incorporates paragraphs 1 through 64 as though set
22 forth fully herein.

23 66. BMHC purchased four fronting insurance policies from AIG. The
24 four insurance policies are, and at all times relevant to this dispute were, valid
25 contracts between BMHC and AIG.

26 67. The forms AIG chose to use as the Completed Operations additional
27 insured endorsements have schedules that are intended to list completed projects
28 for which additional insured coverage may be available. AIG failed to list any

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1 such projects.

2 68. BMHC has performed all of its duties consistent with the terms and
3 conditions of the Policies, and BMHC has paid all premiums.

4 69. AIG has breached its contractual obligations under the Policies by
5 failing to honor their terms and wrongfully providing additional insured coverage
6 when no such coverage exists, and seeking reimbursements for such payments
7 from BMHC.

8 70. AIG has further breached its contractual obligations by failing to
9 properly investigate the additional insured claims, and improperly adjusting such
10 claims.

11 71. BMHC has sustained damages as a result of AIG's breach.

12 72. By reason of AIG's breach of the Policies, AIG is liable to BMHC for
13 damages, including but not limited to compensatory and consequential damages,
14 and reasonable attorneys' fees and expenses in an amount to be proven at trial.

15 **THIRD CLAIM FOR RELIEF FOR BREACH OF THE DUTY OF GOOD**

16 **FAITH AND FAIR DEALING**

17 **(Against All Defendants)**

18 73. Plaintiff hereby incorporates paragraphs 1 through 72 as though set
19 forth fully herein.

20 74. AIG owed BMHC a duty of good faith and fair dealing in the four
21 insurance policies.

22 75. This duty of good faith and fair dealing includes AIG's duty to
23 conduct a good faith investigation and to properly adjust a claim.

24 76. AIG breached this duty by failing to conduct a good faith
25 investigation and properly adjust purported additional insured claims.

26 77. In at least nine instances, AIG failed to confirm that BMHC actually
27 worked on at least one of the homes in the underlying litigation against the
28 purported additional insured, and, in at least one instance, AIG failed to confirm

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1 that an underlying lawsuit had actually been filed against the purported additional
2 insured.

3 78. Upon information and belief, there are numerous documents created
4 or received by the builder during the course of construction of a project that the
5 additional insured claimant could have provided to AIG to establish whether
6 BMHC worked on a particular home, or had any particular connection to that
7 home,--e.g., invoices, checks, lien waivers.

8 79. Upon information and belief, AIG has failed to seek any such
9 documentation from purported additional insureds, or to forward to BMHC such
10 documentation if in AIG's possession.

11 80. Further, AIG has failed to investigate and confirm that any work
12 claimed to have been done by BMHC on a home involved in an underlying
13 litigation was completed during the period the insurance policies were in effect.

14 81. Without conducting a proper investigation, AIG failed in its duty to
15 properly adjust the claims under BMHC's insurance policies.

16 82. AIG has instead attempted to shift its duty to investigate claims to its
17 policyholder BMHC by requiring BMHC to prove the negative and undertake the
18 additional task of obtaining permission for AIG to release documentation from
19 purported additional insureds. These are investigations that AIG was duty-bound
20 to conduct; it was and is not the duty of AIG's policyholder to prove the negative.

21 83. AIG has failed to confirm that the additional insured claimants are in
22 fact additional insureds under the insurance policies' Completed Operations
23 additional insured endorsements.

24 84. AIG also has failed to determine whether any policy exclusions may
25 apply to bar additional insured coverage prior to seeking reimbursement for costs
26 paid to purported additional insureds from BMHC.

27 85. The duty owed by AIG to BMHC under the Policies is equal to the
28 duty owed by AIG to an additional insured submitting a claim under the Policies.

1 86. Instead of treating BMHC and the purported additional insureds
2 equally, AIG has favored itself and the purported additional insureds, improperly
3 adjusted the claims, and paid defense costs to the purported additional insureds
4 without conducting a good faith investigation. AIG then improperly sought and
5 continues to seek reimbursement of defense costs from BMHC for these
6 improperly investigated and adjusted claims to which BMHC had no connection.

7 87. Upon information and belief, in other instances, AIG has faced
8 additional insured demands in which it has declined to extend additional insured
9 status on virtually identical factual grounds—except that, in those instances, AIG
10 was spending its own money, not money that ultimately would be reimbursed by a
11 policyholder. The difference in the present matter reflects AIG's intentional
12 conduct in putting its interests first, before those of its policyholder.

13 88. Despite BMHC pointing out deficiencies in AIG's claims for
14 reimbursement, AIG has continued to demand reimbursement from BMHC for
15 improperly investigated, adjusted and paid claims.

16 89. AIG has therefore breached its duty of good faith and fair dealing to
17 its policyholder BMHC.

18 90. BMHC has sustained damages as a result of AIG's breach.

19 91. BMHC has been forced to bring this lawsuit to remedy AIG's
20 continuing wrongful acts.

21 92. By reason of AIG's breach of its duties of good faith and fair dealing,
22 AIG is liable to BMHC for damages, including but not limited to compensatory
23 damages, punitive and exemplary damages, and reasonable attorney's fees and
24 expenses in an amount to be determined at trial.

25 **FOURTH CLAIM FOR RELIEF FOR ACCOUNTING**

26 **(Against All Defendants)**

27 93. Plaintiff hereby incorporates paragraphs 1 through 92 as though set
28 forth fully herein.

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1 94. AIG claims to have paid defense costs to purported additional
2 insureds under BMHC's fronting insurance policies. BMHC has disputed the
3 claims of the purported additional insureds.

4 95. BMHC has not been provided with details of the amounts AIG claims
5 BMHC must pay to reimburse AIG since September 30, 2017.

6 96. BMHC cannot determine the actual amounts in dispute, or the
7 documentation supporting the amounts claimed to be owed to AIG by BMHC
8 because that information is in the possession, custody, and control of AIG.

9 97. Further, should it be determined that BMHC must reimburse AIG for
10 any costs paid to purported additional insureds, BMHC is entitled to know the
11 amounts unresolved and the documents supporting such amount. Such information
12 is in the possession of AIG and not BMHC.

13 98. Accordingly, BMHC is entitled to an accounting from AIG.

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PRAYER FOR RELIEF

WHEREFORE, BMC STOCK HOLDINGS, INC. prays for judgment as follows:

1. For the First Claim for Relief, a declaration pursuant to 28 U.S.C. § 2201 that:
 - (a) AIG failed to conduct a proper investigation to determine if the purported additional insureds named herein were additional insureds under the Policies;
 - (b) AIG failed to conduct a proper investigation to determine whether BMHC performed work on at least one of the homes in the underlying lawsuits, that BMHC's work was completed during one of the policy periods, that the complained-of work was BMHC's and was defective, and that no policy exclusions applied to bar coverage;
 - (c) AIG voluntarily issued payments for underlying defense costs to such purported additional insureds;
 - (d) BMHC owes no payments to AIG for reimbursement of its voluntary payments;
 - (e) AIG has a duty to and must perform adequate investigations and claims adjustments and confirm that a purported additional insured under the Policies is in fact an additional insured before AIG seeks reimbursement for payments it makes from BMHC;
 - (f) If AIG determines after performing due diligence that an entity is an additional insured under the Policies, it must also confirm that BMHC performed work on at least one of the homes at issue in the underlying lawsuit, that BMHC's work was completed during one of the policy

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1 periods for the Policies, that the complained-of work was
2 BMHC's and was defective, and that no Policy
3 exclusions apply to bar additional insured coverage
4 before AIG seeks reimbursement for payments it makes
5 from BMHC; and

6 (g) AIG shares its investigation details with BMHC.

- 7 2. For the Second Claim for Relief, an award to Plaintiff in an
8 amount of damages to be determined at trial;
9 3. For the Third Claim for Relief, an award to Plaintiff for
10 compensatory, punitive, and exemplary damages in an amount
11 to be determined at trial, and attorney's fees;
12 4. For the Fourth Claim for Relief, an accounting of the
13 underlying defense costs asserted by purported additional
14 insureds, and the amounts paid by AIG to those purported
15 additional insureds;
16 5. For attorneys' fees incurred in bringing this action;
17 6. For costs of suit incurred herein; and,
18 7. For such other and further relief as the Court may deem just
19 and proper.
20

21 DATED: May 29, 2018

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22
23 By: /s/ Bridget B. Hirsch

24 Bridget B. Hirsch

25 Attorneys for Plaintiff BMC STOCK
26 HOLDINGS, INC.
27
28

DEMAND FOR JURY TRIAL

Plaintiff BMC Stock Holdings, Inc. hereby demands a trial by jury for all issues triable by a jury pursuant to the Federal Rules of Civil Procedure, Rule 38, and the Local Rule of Court.

DATED: May 29, 2018

ANDERSON KILL CALIFORNIA L.L.P.

By: /s/ Bridget B. Hirsch

Bridget B. Hirsch

Attorneys for Plaintiffs BMC STOCK
HOLDINGS, INC.

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